

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

DeGrado *et al.*

Application No.: 10/801,951

(Appeal No. 2010-005832)

Filed: March 17, 2004

For: **Facially Amphiphilic Polymers and
Oligomers and Uses Thereof**

Confirmation No.: 2895

Art Unit: 1627

Examiner: CHONG, Yong Soo

Atty. Docket: 1694.0630003/JMC/M-R

**Petition Under 37 C.F.R. § 1.183 & § 41.3 to
Waive Rule 37 U.S.C. § 41.33(d)(2)**

Chief Administrative Patent Judge
Appeal Related Matters
Board of Patent Appeals and Interferences
US Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.183 and § 41.3, the Applicants hereby petition the Board of Patent Appeals and Interferences (“Board”) to waive 37 C.F.R. § 41.33(d)(2) (“Rule 41.33(d)(2)”), which prevents the admission of further evidence during an *ex parte* appeal to the Board. This petition is to permit Applicants to petition under 37 C.F.R. § 1.182 (“Rule 182 petition”) for the admission of new evidence and supplemental material in response to the Board’s May 9, 2011 order (“Order”). That Order requested supplemental briefing in this case. The Rule 182 petition is filed concurrently herewith, along with Applicants Response to the Order for Further Briefing (“Response”).

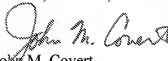
The justification for waiver of Rule 41.33(d)(2) is presented in the concurrently filed Rule 182 petition. To summarize, the Board’s Order requested supplemental briefing, in part, on the highly fact-intensive question of whether the Applicants’ claim is a proper Markush claim. Because the Board raised that fact-intensive issue for the first time in its Order, and

because that issue was not before the Board on appeal, Applicants had not previously had the need, nor the opportunity, to provide evidence in support of the positions taken in the Response. In such an extraordinary situation, justice requires that the Applicants in this case be allowed to supplement the record. For these reasons, and in view of the Rule 182 petition, Applicants respectfully request that Rule 41.33(d)(2) be waived, and the accompanying petition under Rule 182 be considered and granted.

This petition is being filed electronically in the matter of *Ex Parte Degrado et al.*, Appeal No. 2010-005832, Application No. 10/801,951, Technology Center 1600. The petition fee under 37 C.F.R. §1.17(f) in the amount of \$400.00 is submitted with this petition. Any part of the petition fee not paid herewith is hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

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Date: June 20, 2011

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